

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2007-0182, Appeal of Peerless Insurance Company, the court on October 30, 2007, issued the following order:**

Peerless Insurance Company (Peerless) appeals a decision of the compensation appeals board (board) ordering it to pay retroactive death benefits to two dependent children of a deceased employee (decedent) of Peerless' insured. Peerless argues that the board's decision addressed an issue that was not before it and that the board had no authority to require Peerless to pay benefits which it had already paid to others under a 2001 department of labor (DOL) order. We affirm.

We will reverse the board's decision only for errors of law or if we find by a clear preponderance of the evidence that the order is unjust or unreasonable. See RSA 541:13 (1997); Appeal of Hypertherm, 152 N.H. 21, 23 (2005). If competent evidence supports the board's decision, we will affirm its determination even if other evidence would lead to a contrary result. See Appeal of Hooker, 142 N.H. 40, 47 (1997).

RSA 281-A:26 (1999) provides that "[i]f death results from an injury, weekly compensation shall be paid to the dependents of the deceased employee in an amount provided by the compensation schedule in RSA 281-A:28"; the statute also sets forth criteria for eligibility for benefits.

In this case, DOL issued an "authorization for compensation for death" to Peerless in 2001; the authorization allocated the award between five dependents. The dependents included the woman to whom the decedent was married at the time of his death in 2000, her two children from a previous marriage and the decedent's two biological children. In 2004, Peerless wrote to DOL to advise that the woman had remarried in 2001 and that "it would be our position that [the wife and her two children] would not have been entitled to receive death benefits since [her] remarriage." The letter further provided, "It would also be our position that the weekly death benefit of \$247.21 should have been redistributed [between the decedent's biological children] since 8/25/01." Peerless then asked DOL to make a determination regarding reassignment of death benefits and suggested that the ineligible recipients should pay the wrongfully received benefits to the biological children. DOL disagreed and advised Peerless that the biological children were entitled to the revised benefits retroactive to August 25, 2001. Peerless appealed.

Peerless first argues that the board had no authority to invalidate the 2001 DOL authorization because when Peerless appealed to the board the only issue it raised was whether the DOL order “requiring Peerless to pay twice, monies it had already been ordered to pay, was validly and legally issued.” We disagree that the board invalidated the 2001 authorization. Because Peerless’ argument is based on a faulty premise, it fails.

Peerless also argues that the board had no authority to order Peerless to pay benefits when it had already paid those benefits to others pursuant to the earlier DOL order. Peerless cites no cases to support this proposition. We have previously held that death benefits conferred under the workers’ compensation statutes are personal. See Diamond v. Employers’ &c. Company, 97 N.H. 510, 511-12 (1952). Absent a waiver by the rightful recipients or their representatives, their rights cannot be satisfied by payments to unauthorized third parties.

Finally, Peerless argues that the proper remedy is for the natural born children to bring suit against the wrongful recipients to recover the benefits. Again, Peerless cites no case for this proposition and we are not persuaded by its argument. Peerless had a statutory obligation to provide certain level of benefits to the biological children of the decedent; it failed to satisfy that obligation. We find no error in the board’s determination that Peerless is required to pay the rightful recipients the correct level of benefits for the period required by statute. We express no opinion as to the rights of Peerless to pursue legal action against any third parties who may have received benefits in this case in error.

Affirmed.

DUGGAN, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,  
Clerk**